



Queensland

# Education Legislation Amendment Regulation (No. 2) 2012

## Explanatory Notes for SL 2012 No. 71

made under the

*Education (Accreditation of Non-State Schools) Act 2001*  
*Education (General Provisions) Act 2006*

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## General outline

### Short title

*Education Legislation Amendment Regulation (No. 2) 2012.*

### Authorising law

Section 9 of the *Education (Accreditation of Non-State Schools) Act 2011* prescribes that a regulation may prescribe criteria relevant to a school's accreditation.

Section 365A(4) and 366A(5) of the *Education (General Provisions) Act 2006* (EGPA) provide that a regulation may prescribe the particulars that a report about likely sexual abuse must include.

### Policy objectives and the reasons for them

The *Education and Training Legislation Amendment Act 2011* (Amendment Act) amended the EGPA to expand existing reporting requirements so that school staff members are required to report to the police suspected sexual abuse perpetrated by any person, not just

employees (sections 365 and 366), as well as a likelihood of future sexual abuse (new sections 365A and 366A).

The *Education Legislation Amendment Regulation (No. 1) 2012* (the Amendment Regulation), made on 16 February 2012 made consequential amendments to the *Education (General Provisions) Regulation 2006* (EGP Regulation) and the *Education (Accreditation of Non-State Schools) Regulation 2001* (Accreditation Regulation) to reflect the changes to mandatory reporting sections.

Section 68 of the EGP Regulation lists the information that must be included in a report under the EGPA reporting requirements. Section 7 of the Amendment Regulation inserted a new section 68A in the EGP Regulation to prescribe what a report made about a suspicion of likely sexual abuse must include.

The Accreditation Regulation prescribes the accreditation criteria relevant for a non-state school's accreditation. Section 10 of the Accreditation Regulation provides that a non-state school must have written processes about appropriate conduct of a non-state school's staff and students that accord with legislation applying in the State about the care or protection of children. Section 10(5)(a) provides that these processes must include a process for reporting sexual abuse or suspected sexual abuse in compliance with the EGPA. Part 2 of the Amendment Regulation amended the Accreditation Regulation to prescribe a non-state school must have written processes for reporting a suspicion of likely sexual abuse.

The Amendment Regulation was to commence on 9 July 2012, when the expanded reporting requirements were to commence. However, commencement of the requirement to report a likelihood of sexual abuse under new sections 365A and 366A will now be delayed to enable amendments to be made to clarify that section 204 of the *Criminal Code* does not apply to the failure to report under those sections.

Under the EGPA it was intended that failing to report a likelihood of future sexual abuse would be dealt with by the education sectors via possible disciplinary action. This aimed to mitigate concerns that the risk of criminal sanction would increase reporting of inappropriate low level matters. The policy intention was made clear in the Explanatory Notes and during the inquiry by the Industry, Education, Training and Industrial Relations Committee into the amendments.

It has subsequently been identified that despite the policy intention, a person who fails to report the likelihood of future sexual abuse may be

guilty of a misdemeanour (maximum of 1 year imprisonment) under section 204 of the *Criminal Code*. Section 204 provides that a person who fails to comply with a statutory obligation is guilty of a misdemeanour unless a mode of proceeding against the person is expressly provided.

This Regulation will omit part 2 and section 7 from the Amendment Regulation. These amendments to the EGP and Accreditation Regulation will be progressed at a later time to align with commencement of the expanded requirement to report a likelihood of future sexual abuse.

### **Achievement of policy objectives**

The policy objectives are achieved by omitting part 2 and section 7 of the Amendment Regulation.

### **Consistency with policy objectives of authorising law**

This subordinate legislation is consistent with the objectives of the *Education (Accreditation of Non-State Schools) Act 2001* and the *Education (General Provisions) Act 2006*.

### **Inconsistency with policy objectives of other legislation**

There is no inconsistency with the policy objectives of other legislation.

### **Benefits and costs of implementation**

There are no cost impacts by removing part 2 and section 7 from the Amendment Regulation.

### **Consistency with fundamental legislative principles**

This subordinate legislation is consistent with fundamental legislative principles.

### **Consultation**

The Queensland Catholic Education Commission and Independent Schools Queensland have been consulted.

## Notes on Provisions

Clause 1 sets out the short title of the Regulation.

Clause 2 states that the Regulation to be amended is the *Education Legislation Amendment Regulation (No. 1) 2012*.

Clause 3 removes Part 2 of from the Amendment Regulation. Part 2 amended section 10 of Accreditation Regulation to insert a new criterion that a non-state school must have written process for reporting suspicions of likely sexual abuse in compliance with the new section 366A of the EGPA.

Clause 4 removes section 7 from the Amendment Regulation. Section 7 inserted new section 68A into the EGP Regulation which outlines the particulars for a report about the likelihood of sexual abuse made under new section 365A and 366A.

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## ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Education, Training and Employment.

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